

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 22, 2011

Lyle W. Cayce
Clerk

No. 11-60220
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANTHONY KIZZEE,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:96-CR-28-1

Before BENAVIDES, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Anthony Kizzee, federal prisoner # 07411-112, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence based on Amendment 706 to U.S.S.G. § 2D1.1(c)(1). Kizzee was convicted of one count of conspiracy to possess with intent to distribute cocaine base, six counts of traveling in interstate commerce with intent to promote unlawful activity, and one count of possession with intent to distribute cocaine base. He was sentenced to life imprisonment on the conspiracy and possession counts and 60 months on

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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the interstate travel counts and five years of supervised release on the conspiracy and possession counts and three years of supervised release on the interstate travel counts, all to run concurrently.

Because Kizzee was responsible for more than 4.5 kilograms of cocaine base, the quantity that triggers the highest base offense level under the retroactive, amended version of § 2D1.1(c)(1), he was ineligible for a sentence reduction. *See* U.S. SENTENCING GUIDELINES MANUAL Supp. to app. C, Amendment 706, pp. 226, 231 (Nov. 1, 2007); U.S. SENTENCING GUIDELINES MANUAL Supp. to app. C, Amendment 713, p. 253 (Mar. 3, 2008); U.S.S.G. § 1B1.10(a)(2)(B). Kizzee's argument that the district court should have reduced his sentence because the Guidelines are advisory is foreclosed. *See Dillon v. United States*, 130 S. Ct. 2683, 2692 (2010); *United States v. Dublin*, 572 F.3d 235, 237-38 (5th Cir. 2009). The district court did not abuse its discretion in refusing to reduce Kizzee's sentence. *See United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 3462 (2010). The judgment of the district court is AFFIRMED. The Government's motion for summary affirmance is GRANTED, and Kizzee's motion for leave to file pro se a supplemental brief is DENIED. *See* 5TH CIR. R. 28.6.